

STRUCTURE OF THIS DRAFT

A. Ordering of chapters

CHAPTER 1: FOUNDING PROVISIONS

Section 1: Establishment of Republic

Section 2: Supremacy of Constitution

CHAPTERS 2 and 3: NATIONAL IDENTITY and BILL OF RIGHTS

(The order of these chapters depends on the contents of the chapter on National Identity. See notes below.)

CHAPTER 4: PARLIAMENT

CHAPTER 4: NATIONAL EXECUTIVE

CHAPTER 5: COURTS

CHAPTER 6: INSTITUTIONS TO PROTECT PUBLIC INTEREST

CHAPTER 7: PROVINCIAL LEGISLATURES AND EXECUTIVES

CHAPTER 8: LOCAL GOVERNMENT

CHAPTER 9: INDIGENOUS LEADERS

CHAPTER 10: FINANCE

CHAPTER 11: PUBLIC ADMINISTRATION

CHAPTER 12: SECURITY SYSTEMS

CHAPTER 13: AMENDMENT

NOTE: It is proposed that transitional arrangements be dealt with in a separate Act.

B: Explanation of the proposed ordering:

The ordering of chapters of the Constitution that is proposed here is based on the following criteria:

- (i) Every aspect of the Constitution, including its structure, should reflect our commitment to establishing a constitutional democracy.
- (ii) The Constitution should be easy to read and those parts most important to South Africans should appear near the beginning, with more technical issues later.

These criteria are reflected in the present ordering in the following ways:

(a) The first chapter identifies the key elements of the new constitutional order and, in simple terms, clearly asserts constitutional supremacy.

(b) It is proposed that a chapter tentatively named 'National Identity' should include citizenship, franchise, symbols and language. Both this chapter and the Bill of Rights belong near the beginning of the Constitution because of the importance of their provisions to all South Africans. It might also be appropriate to put National Identity first, because, in this scheme, it includes citizenship and the franchise. However, if the provisions are technical, for example referring the reader to proclamations describing symbols, the Bill of Rights should precede this section.

(c) Separation of powers between legislature, executive and judiciary, which is required by the Constitutional Principles (CP VI) and which is a key element of constitutionalism is reflected in the separation of the sections on Parliament, the National Executive and the Judiciary into chapters and the grouping of these three chapters. Chapter 6, dealing with 'Institutions to Protect the Public Interest', follows immediately because these institutions are national institutions which provide the checks and balances on state power essential to constitutionalism and required by CP VI.

(d) Chapters 7 and 8 on provincial and local government reflect another aspect of separation of powers, that between the centre and sub-national units.

(e) The last chapters include matters which are more technical and which fill out the picture of a constitutional order in which the state is subject to independent controls and accountable.

(f) In terms of this proposal, transitional matters will be dealt with in a separate Act which would become obsolete once all Constitutional institutions have been properly established.

C. Ordering within specific chapters:

In most chapters in this draft, sections have been arranged first to describe the powers of the institution it covers, then to describe the formation of the institution, and then to deal with more technical matters. This pattern varies sometimes where a slightly different order seems more coherent or allows related issues to be linked.

